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C O N F I D E N T I A L GUAYAQUIL 0196

E.O. 11652: GDS

TAGS: PFOR, EFIS, PLOS, EC, US

SUBJ: SEIZURE OF U.S. TUNA VESSELS: CITY OF LISBON, MARY

ELIZABETH, CALYPSO, AND JACQUELINE A.

REF: GUAYAQUIL 192

1. AFTERNOON OF FEB. 1 MEETING HELD AT CONSULATE GENERAL ATTENDED BY ARTHUR SOUSA, ZAPATA VICE-PRESIDENT; VICENTE YULEE, ZAPATA REP; JOSE ZAPATIER, LOCAL LAWYER WHO PREPARED APPEALS; CAPTAIN NICOLAS LAVALLOUIS, MASTER OF CITY OF LISBON; AND CONSUL GENERAL. FOLLOWING SUMMARY OF CONVERSATION INCLUDES AMPLIFICATION AND CORRECTION OF INFORMATION CONCERNING APPEAL PRESENTATION CONTAINED REFTTEL; OUTLINE OF CONTENT OF APPEALS AND OBSERVATIONS REGARDING POSSIBILITY OF SUCCESSFUL RULING; NEXT STEPS IN JUDICIAL PROCESS; AND DIRECTOR GENERAL OF FISHERIES ATTITUDE TOWARD APPEALS.

2. CAPTAINS OF CITY OF LISBON, CALYPSO, MARY ELIZABETH, AND JACQUELINE A. PRESENTED SEPARATE APPEALS CONCERNING CONFISCATION OF CATCH TO DIRECTORATE GENERAL OF FISHERIES OFFICIALS PRIOR TO MIDNIGHT JAN. 31 DEADLINE. RECEIPT FOR LAST APPEAL PRESENTED IN SALINAS SIGNE
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AT 2355 JAN. 31. CAPTAIN OF CITY OF LISBON PRESENTED APPEAL CONCERN-

ING

REPEAT OFFENDER FINE FOR OWNER HIS VESSEL AT 1700 FEB. 1. DEADLINE
FOR
RECEIPT THIS APPEAL WAS MIDNIGHT FEB. 1 BECAUSE FISHERIES DIRECTORATE

DECISION TO FINE OWNER AS REPEAT OFFENDER WAS DELIVERED TO BOAT
CAPTAIN 24 HOURS AFTER HE HAD RECEIVED DECISIONS CONCERNING CONFIS-
CATION OF CATCH AND FINE ON BOAT FOR FISHING WITHOUT LICENSE.

3. WHEN BOATS CAPTURED, CITY OF LISBON HAD 149 TONS OF CATCH ON BOARD;

CALYPSO, 203 TONS; MARY ELIZABETH, 300 TONS; AND JACQUELINE A.,
478 TONS. APPEAL OF EACH BOAT CAPTAIN CONTAINED REQUEST THAT
DECISION TO CONFISCATE CATCH BE OVERRULED BECAUSE OF LACK OF
STRUCTURAL AND JURIDICIAL HARMONY IN PENALTY PROVISIONS OF ECUADOREAN

FISHING LAW. IN THE EVENT THIS REQUEST NOT GRANTED BY SPECIAL
TRIBUNAL, APPEALS OF CAPTAINS OF CALYPSO AND MARY ELIZABETH ALSO
CONTAINED REQUEST THAT FISH CAUGHT OUTSIDE 200 MILE LIMIT NOT BE
CONFISCATED. SITES OF WHERE FISH CAUGHT DESCRIBED IN VESSELS' LOG
BOOK ENTRIES. (THESE TWO CAPTAINS STATE THAT ALL FISH ON BOARD AT
TIME OF CAPTURE HAD BEEN CAUGHT OFF MEXICO AND CENTRAL AMERICA.)
APPEAL OF JACQUELINE A. CAPTAIN ALSO CONTAINED REQUEST THAT FISH
CAUGHT MORE THAN 200 MILES FROM ECUADOREAN COAST NOT BE CONFISCATED.
SITES WHERE FISH CAUGHT DESCRIBED IN LOG BOOK AND IATTC SEALED
THOSE WELLS WHERE FISH CAUGHT LAST YEAR ARE STORED. (CAPTAIN STATES
THAT OF 473 TONS ON BOARD, 400 IN IATTC SEALED STORAGE AREAS.)
IN APPEAL PRESENTED FEB. 1, CAPTAIN OF CITY OF LISBON REQUESTED
OVERRULING OF DECISION TO FINE BOAT OWNER BECAUSE THIS SECOND CAPTURE
OF VESSEL ON GROUNDS THAT THIS IS FIRST SEIZURE UNDER BOAT'S
PRESENT OWNERSHIP.

4. ZAPATIER BELIEVES STRONGEST JURIDICIAL CASE FOR OVERTURN ORIGINAL
DECISION LIES IN APPEAL OF JACQUELINE A. CAPTAIN TO NOT CONFISCATE
FISH CAUGHT OUTSIDE ECUADOREAN CLAIMED TERRITORIAL SEA. HE STATES TH
AT
SIMILAR APPEALS OF CAPTAINS OF CALYPSO AND MARY ELIZABETH NOT AS
STRONG BECAUSE THEIR EVIDENCE OF WHERE FISH CAUGHT IS BASED ENTIRELY
ON
LOG ENTRIES. ZAPATIER IS DOUBTFUL THAT GENERAL APPEAL TO NOT CONFIS-
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CATE ANY CATCH WILL BE APPROVED. HE ALSO BELIEVES THAT DECISION TO
FINE OWNER OF CITY OF LISBON AS REPEAT OFFENDER WILL BE SUSTAINED.
SAPATIER POINTS OUT THAT MAJORITY OF MEMBERS OF TRIBUNAL WHICH REVIEW
S
APPEALS MUST BE LAWYERS, WHILE THOSE WHO WROTE LAW WERE NAVAL OFFICER
S
AND ECONOMISTS, AND THEREFORE HE BELIEVES THAT HIS ARGUMENTS AGAINST
CONFISCATING FISH CAUGHT OUTSIDE CLAIMED TERRITORIAL WATERS

WILL BE UPHELD.

5. NOW THAT ALL APPEALS HAVE BEEN PRESENTED BEFORE REQUIRED DEADLINES, ZAPATIER ESTIMATES THAT IT WILL TAKE DIRECTORATE GENERAL OF FISHERIES ABOUT TWO DAYS TO ORGANIZE ALL DOCUMENTS IN PROPER FORM AND FORWARD CASES TO QUITO. THE SPECIAL TRIBUNAL THAT WILL HAND DOWN FINAL RULING HAS NO SPECIFIC TIME LIMIT IN WHICH IT MUST ACT. ZAPATIER CLAIMS THAT 15 DAY TIME LIMIT FOR PAYMENT OF FINES WILL NOT BEGIN UNTIL FINAL DECISION IS RENDERED. THIS ALSO APPLIES TO THOSE FINES WHICH WERE NOT APPEALED. TRIBUNAL MUST CONFIRM DECISION REGARDING THESE FINES BEFORE 15 DAY LIMIT BEGINS TO RUN. ZAPATIER MAINTAINS THAT DEPOSITING AMOUNT EQUAL TO FINES AS GUARANTEE APPLIES ONLY TO FINE PENALTIES AND WOULD BE REQUIRED ONLY IN THOSE CASES WHERE BOATS WISHED TO DEPART WHILE APPEAL UNDER CONSIDERATION. BECAUSE MOST IMPORTANT APPEALS OF FOUR BOAT CAPTAINS CONCERN CONFISCATION OF CATCH, THE QUESTION OF MAKING FINANCIAL DEPOSIT IS NOT PRESENT IN THOSE CASES.

6. YULEE ELABORATED ON REASONS FOR HIS IMPRESSION THAT WILSON ARROYO , DIRECTOR GENERAL OF FISHERIES, WAS UPSET WHEN HE LEARNED THAT APPEALS HAD BEEN PRESENTED BEFORE MIDNIGHT JAN. 31 DEADLINE (PARA 5, REFTEL). DURING 0200 FEB. 1 CONVERSATION IN SALINAS, JAIME MUNOZ, SECOND RANKING LAWYER OF FISHERIES DIRECTORATE, TOLD YULEE THAT ARROYO FEARFUL THAT SOME APPEALS WOULD BE APPROVED BY TRIBUNAL, THUS PLACING ARROYO IN UNENVIABLE POSITION OF HAVING HIS DECISIONS ON IMPORTANT AND SENSITIVE MATTERS REVERSED. YULEE CLAIMS THAT NEITHER ARROYO NOR HIS LEGAL ADVISOR, SANCHEZ, BELIEVED THAT THEIR DECISIONS WOULD BE APPEALED BECAUSE IN LONG HISTORY OF SEIZURES NOT ONE APPEAL HAS BEEN MADE ON DECISION AGAINST U.S. FLAG BOAT. (YULEE, AND ZAPATIER RECALLED CAPTURES OF U.S. VESSELS THAT RESULTED IN DECISIONS THAT, IN THEIR OPINION, SHOULD HAVE

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BEEN APPEALED BUT WERE NOT. YULEE NOTED THAT U.S. OWNERS AND CAPTAINS WERE ANXIOUS FOR SEIZED BOATS TO RETURN TO SEA AS SOON AS POSSIBLE AND THEREFORE DID NOT WANT GO THROUGH DELAY OF APPEAL PROCESS EVEN THOUGH THEY HAD GOOD CASE BECAUSE THEY KNEW THEY WOULD BE RIMBURSED FOR FINES UNDER TERMS OF FPA. ZAPATIER REMEMBERED SUCCESSFUL APPEAL ON BEHALF OF JAPANESE BOAT AND YULEE COMMENTED ON CANADIAN BOAT APPEAL, THE ATLANTIC GARDNER, THAT HAD BEEN WON BY OWNER.) BASED ON HIS CONVERSATION WITH MUNOZ, AND OTHER INCIDENTS THAT TOOK PLACE ON JAN. 31, YULEE CONCLUDES THAT ARROYO AND SANCHEZ, BELIEVING THAT NO CHALLENGES TO THEIR ACTIONS WOULD BE OFFERED, FAILED TO SUBSTANTIATE THOROUGHLY THEIR DECISIONS TO IMPOSE FINES AND CONFISCATE CATCH. WHEN FINALLY FACED WITH FACT THAT APPEALS WOULD BE MADE THEY SOUGHT AVOID PUBLIC DISCLOSURE THEIR WEAK CASE PREPARATION BY PREVENTING PRESENTATION OF APPEALS BEFORE MIDNIGHT JAN. 31 DEADLINE.

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